

# Review

*What Went Wrong With Money Laundering Law?* by

Peter Alldridge, Palgrave, 2016, 81pp (ISBN 9781137525352)

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## Introduction

*What Went Wrong with Money Laundering Law* is a timely intervention. The book is a continuation of Alldridge's sustained concern about the expansion of money laundering regulations (Alldridge 2003, 2008). The monograph is a short, engaging polemic that unpicks the assumptions underlying money laundering law and questions 'what is wrong with laundering, and why, if at all, it need be a crime' (p. 2). As Alldridge notes up-front, he does not intend to provide a comprehensive account, but rather to critique the unreflective enthusiasm in the United Kingdom ('UK') and the international community for the anti-money laundering/countering the financing of terrorism project ('AML/CFT'). Although focused on the UK, the monograph provides insight into the woes of the Commonwealth Bank of Australia ('CBA') and the AML edifice. At time of writing, the CBA risks fines of hundreds of millions of dollars after the federal Government's Australian Transaction Reports and Analysis Centre accused it of ignoring police warnings to monitor suspicious accounts, and failing to report tens of thousands of transactions worth more than \$500 million, in breach of money laundering and terrorism financing laws.

## Book structure

The monograph consists of two parts. The first part provides an introduction and short history of what laundering looks like and the development of the anti-money laundering narrative. This part is highly successful and provides a persuasive overview of the narratives that have justified the massive surveillance and enforcement program of the AML industry. Alldridge asserts that there are two major ideal images of laundering. The first, promulgated by the Financial Action Task Force ('FATF'), the United Nations, Global Financial Integrity, the World Bank, the International Monetary Fund, the OECD and the European Union presents laundering as 'elaborate, sophisticated, glamorous and vague' (p. 3). In contrast, the other image is 'concrete, quotidian, easily comprehensible, and difficult to regard as global threat' (p. 4). Alldridge points to the AMC Network's *Breaking Bad*, where Saul explains to Jesse that he needs to invest in a nail salon to acquire a legitimate cover. Interestingly, the recent Netflix drama *Ozark* manages to embrace both images. Marty Bryde (played by Jason Bateman) relocates with his family to the Ozarks region in Missouri to launder millions in cartel cash. While the cartel provides a threatening backdrop of international drug smuggling, Bryde's actions are more prosaic, investing in a derelict bar

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and petrol pump to launder his own money as a test. This idea of shifting away from abstract, unproven claims to criticisms based on concrete examples informs the entire book.

The second part of the book focuses on the impacts upon substantive laundering law. Alldridge returns to classic criminal law doctrine and argues that laundering could simply be regarded as a form of complicity. However, he argues that for advocates of AML the idea of complicity does not make laundering bad enough to justify the AML edifice. The gravity of complicity is dependent to some extent at least on the gravity of the predicate offence that generates profit. However, Alldridge argues that the AML narrative asserts that *all* money laundering is serious. He suggests an alternative explanation for the criminalisation of money laundering is to justify the very onerous reporting obligations required by the FATF. The FATF is an intergovernmental standard-setting body that requires governments to put in place investigatory powers and punishments commensurate with very serious offences. Alldridge argues it was necessary to invent the 'serious' crime of laundering, that is, 'the tail wagged the dog' (p. 38). He then goes on to consider the legislation and case law in detail, including the difficulties of calculation of confiscations of assets due to the unclear underlying narratives.

## Critique of anti-money laundering legislation

Like many criminal law theorists, Alldridge is concerned about the trend of over-criminalisation (Brown 2013; Lacey 2004). He argues that it is important that the 'considerations bearing upon the decision to criminalise or not to criminalise be reassessed at each step' (p. 8), successfully applying this argument to AML:

AML law has brought a very serious criminal offence into existence without a clear idea of what is wrong with it. It has failed properly to assess the nature of the principle against allowing a criminal to benefit from his/her crime, and in particular without clear limiting principles based upon its application. It has legislated at every level on the repeated but baseless assumption that financial institutions are endangered by laundering. It has on successive occasions allowed incremental expansion of that crime without appropriate reassessments and it has afforded insufficient significance to the distinction between crimes with and without victims (p. 33).

Alldridge argues that AML narratives are built on sand. In particular, there is slippage between the crimes that are the specific foci of the AML project. Initially, in the 1970s and 1980s, the focus was on confiscating the profits of drug dealers, although as Alldridge notes, 'even if one deplores the fact that drug dealers profit from crime and wishes to confiscate those profits, it does not follow that one must necessarily be committed to the view that money laundering *itself* should be a crime' (p. 10). Organised crime was then relied upon to justify extraordinary measures to combat it. AML was, and continues to be, justified in terms of protecting the financial markets. Alldridge points out that 'of all the crises and insolvencies arising in financial institutions from the crash of 2007–2008, none was as a result of money-laundering'. The claim that interventions are justified to safeguard financial institutions are thus 'fanciful and smacks of policy-based evidence making' (p. 13). Post-11 September 2001, AML was justified to prevent the financing of terrorism, although the quest to identify terrorist financing among the billions of dollars of global financial markets was compared to 'be akin to searching for an indistinguishable needle amongst a stack of needles' (Wolosky & Heifetz 2002, p. 3). AML has also been justified in terms of corruption, to which Alldridge responds:

Of course they are. The link could be claimed equally for any offence that either yields money or requires money for its commission. If the commentators' claims are rephrased as 'corruption and complicity in corruption are intrinsically linked' then the pleonasm becomes clear. This is not to say that corruption is not a serious and a pernicious group of crimes ... Far more needs to be done about, but hoping that AML will do the trick is not the way ... Proceeds of crime law, and following-the-money, is too much about the closure of stable doors subsequent to equine departures (p. 27).

This quotation demonstrates Alldridge's demolition of underlying assumptions about AML in a way that is persuasive and accessible.

For such a short book there is a surprising amount of repetition and circularity — but this reflects the slipperiness and circularity of the AML discourse. The first part of the book is highly accessible and would be of interest to experts and general readers alike. Alldridge provides ample references to follow up on any points of interest. The second part of the book is more technical and likely to appeal to those with a pre-existing interest.

I very much enjoyed reading this book. It provides an important antidote to the juggernaut of AML. However, despite his persuasiveness, Alldridge's analysis implies that it may be too late to halt the reach of the AML industry.

## References

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